In the Supreme Court [illegible]

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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 700

CAROLA HUNTER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ROBERT HUNTER, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 75–78) is not reported. The Circuit Court of Appeals did not render an opinion.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 18, 1944 (R. 104). The petition for a writ of certiorari was filed on No-

vember 24, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the court below erred in affirming the decision of the Tax Court which held that certain expenditures made by taxpayers were not ordinary and necessary expenses incurred in carrying on a trade or business within the meaning of Section 23 (a) of the Internal Revenue Code, but on the contrary constituted non-deductible expenditures under Section 24 (a) of the Internal Revenue Code.

STATUTE AND REGULATIONS INVOLVED

The statutory and regulatory provisions involved are set forth in the Appendix, *infra*, pp. 7–10.

STATEMENT

The facts found by the Tax Court (R. 75–77) may be summarized as follows:

The taxpayers, as partners, purchased a farm of 137 acres on July 1, 1940. The farmhouse, being over 155 years old, was in bad condition and a tenant refused to move in until the place was thoroughly renovated. Accordingly, walls were removed and others added in order to enlarge the second floor. The farmhouse was painted and redecorated. Gutters, downspouts, and roof slates were replaced. (R. 75.)

A creek which ran through the farm had formed an elbow extending toward the barnyard. This threatened soil erosion and serious damage. To prevent further damage, the elbow was removed by restoring the original bed of the creek. (R. 76.) Also, to enlarge the fields, stumps and rocks were removed by blasting. In so doing, taxpayers incurred expenses for dynamite, caps and fuses. In the course of the blasting, some damage resulted, consisting mostly of broken windows and sash; the taxpayers caused the damage to be repaired. (R. 75.)

The chicken coop, pigpen, sheep shed and dairy barn were all in need of renovation. Rotted and decayed boards were removed from these buildings and replaced with new lumber. The buildings were also painted. An electrical installation was in existence but it had never been inspected and was reconditioned to meet the approval of the county inspectors. (R. 75.)

The Commissioner ruled that the expenses in connection with above matters were not deductible and determined deficiencies in income tax against taxpayers (R. 5, 13). The Tax Court agreed with the Commissioner's ruling (R. 75–78). The cases were consolidated on appeal (R. 90) and the Circuit Court of Appeals affirmed the decision of the Tax Court (R. 104).

ARGUMENT

Whether the expenditures incurred by taxpayers were deductible as ordinary and necessary business expenses constituted a question of fact for the determination of the Tax Court. *Commissioner* v. *Heininger,* 320 U. S. 467; *Dobson* v. *Commissioner,* 320 U. S. 489, rehearing denied, 321 U. S. 231. While the evidence consisted almost entirely of the testimony of one witness, that does not, as claimed (Pet. 11–12), transform factual determinations into legal conclusions. Whether the expenditures were for permanent improvements or betterments which increased the value of the property, as the Tax Court found, or whether they were for repairs of a recurring type which did not prolong the life or add to the value of the property, were factual inferences to be determined by the Tax Court from the evidence. *Commissioner* v. *Scottish American Investment Co.,* Nos. 52–54, 220–222, present Term, decided December 4, 1944. The conclusions of the Tax Court, being reasonably based on the evidence, were properly affirmed by the court below.

The expenditures here were the kind which Section 24 (a) of the Internal Revenue Code (Appendix, *infra,* p. 7) describes as not being deductible. Increasing the productivity of taxpayers' farm by changing the course of a creek to prevent further soil damage and erosion, and enlarging the tillable acreage by removing stumps

and rocks were matters which increased the value of the taxpayers' property; the cost of accomplishing this was properly held not to be deductible but subject to recoupment on a sale of the property.[1] Although taxpayers assert that this did not increase the value of the land (Pet. 8), it is difficult to understand how farm land which is made more productive can fail to be more valuable. But if that matter could properly be disputed, it is submitted that the very kind of factual question is presented by the record which the taxpayers deny exists (Pet. 11–12).

Expenditures to recondition the chicken coop, pigpen and sheep shed by replacing decayed boards with new lumber; the cost of renovating the farmhouse by removing and adding walls in order to enlarge the second floor, by painting and decorating, and by replacing the gutter, down-spouts and roof slates; payments for reconditioning the electrical installations—these were all outlays which the Tax Court justifiably held not to constitute ordinary business expenses. Since these expenditures resulted in an increase in the useful life or value of the property being improved, they were not deductible under Section 24 (a) of the In-

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[1] Although it is asserted (Pet. 8) that the Tax Court erroneously stated that the increased value of the land should be depreciated, the Tax Court actually stated that all the expenditures involved in this case "are added to the cost of the investment, to be recovered either through sale or depreciation throughout the life of the investment" (R. 77).

ternal Revenue Code and under the applicable provisions of Treasury Regulations 103 (Appendix, *infra,* pp. 7–9).

The cases cited by taxpayers do not reveal that any errors of law were committed by the Tax Court. On the contrary, they demonstrate that each case must be decided on its own facts and that determinations of the triers of fact, supported by substantial evidence, must be accorded finality. See *McDonald* v. *Commissioner,* No. 36, present Term, decided November 20, 1944.

CONCLUSION

The decision of the Circuit Court of Appeals is correct. There is no conflict of decisions, and no question of importance is presented. Accordingly, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 1944.